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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 434

TILDEN W. JOHNSON,

Appellant,

vs.

STATE BAR OF CALIFORNIA, a public corp., HUGH W. DARLING, SAMUEL O. PRUITT, JR., A. STEVENS HALSTED, JR., and HARVARD CLUB OF SOUTHERN CALIFORNIA,

Appellees.

JURISDICTIONAL STATEMENT

1. Judgment-Opinion Cal. Court of Appeal
2. Order After Judgment 3-12-69 Calif. Court of Appeal
3. Order After Judgment 5-8-69 Calif. Supreme Court

TILDEN W. JOHNSON
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In Propria Persona

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Appellees.

JURISDICTIONAL STATEMENT

1. Appellant appeals from the judgment of the Court of Appeal, Second Appellate District of the State of California (hereinafter Calif. Court of Appeal) entered on Dec. 23, 1968 and the order of that court denying a petition for a rehearing entered

on Jan. 20, 1969, by which judgment and refusal to rehear the said Court affirmed the judgment orders of the Superior Court of the State of California in and for the County of Los Angeles (hereinafter Superior Court) sustaining demurrers without leave to amend and dismissing the multiple cause action.

The said Calif. Court of Appeal became the highest California State Court in which a judgment-opinion decision could be had on original Superior Court State Bar Examination procedure, and other causes when the California Supreme Court denied a petition for a hearing on Superior Court and Court of Appeals actions on Feb. 19, 1969.

However, the Superior Court memorandum of judgment exhibit "C" appendix herein, and Calif. Court of Appeal opinion exhibit "E" herein show judgments in misapprehension of facts of suit from misleading defendant suggestions that made a Motion after final judgment to Recall Remittitur and Void court actions applicable under Calif. Rule of Court 25(d), derived from Common-Law case precedent inherent power of court (see Statute section herein) including right of court to act on its own motion after knowledge. In this respect an Order After Final Judgment denying Remittitur Recall and Voiding made by the Calif. Supreme Court 5-8-69 in disregard of 14th amendment of the U. S. Constitution is clearly directly appealable from the Calif. Supreme Court.

(See petition-motion denied in transcript on appeal to U. S. Supreme Court invoking the said 14th

amendment, and requesting (a) a hearing and/or (b) Recall and Voiding on Court's own motion as required by said 14th amendment.)

Thus Combined Herein Further Separate Appeals From Orders Denying Motions After Judgment

---

2. Appellant appeals herein the Order After Judgment of said Calif. Court of Appeal of March 12, 1969 denying a "Motion to Recall the Remittitur and Void the Superior Court Judgment" per Calif. Rule of Court 25(d) for misapprehension of fact Judge was a party (his agent or alumni class sued through Mr. Halsted who could have sued Judge if he lost to appellant-first court business was to see if Judge Kenny should have been substituted for Mr. Halsted as a better Doe) and suit was in part for State Bar representing measures were calibrated so 800 points could be scored, and highest number of scorable points would be used for 100% grade. The court statements show no comprehension of real facts of suit. The transcript on appeal shows Court of Appeal opinion just copy from erroneous defendant briefs, i. e. misapprehension from misleading suggestions.

3. Appellant appeals the Calif. Supreme Court Order After Judgment of May 8, 1969, denying (a) a hearing of the Calif. Court of Appeal denial of Recall of Remittitur of March 12, 1969 and also (b) that the Calif. Supreme Court act on its own motion to Recall Remittitur and Void the Judgment

to comply with the due process, and prohibition of depriving of property in cause of action without due process of the 14th Amendment of the U. S. Constitution, and Calif. State Laws, which item (b) the Calif. Supreme Court denied by its action in Order of May 8, 1969.

While the U. S. Supreme Court Order of June 20, 1969 (exhibit "J" appendix herein) by Asso. Justice, the Hon. Thurgood Marshall permits filing and docketing this combined appeal thru Aug. 6, 1969, the appeal (3) above of the Calif. Supreme Court Order is the only appeal fully docketed within 90 days as required by the new U. S. Supreme Court Rules of Oct. 2, 1967. Since requiring the Calif. Supreme Court per the 14th amendment to Recall Remittitur and Void the Judgment appealed would return the case to Superior Court for proper recognition of facts sued on and proper trial, perhaps the U. S. Supreme Court should first consider appeal (3) above of Order After Judgment.

Appellant submits this Jurisdictional Statement to show that the U. S. Supreme Court has jurisdiction of the appeal in whole or in part and that substantial Federal Questions are presented, and that Federal Laws and Constitution were violated as said irregular court proceedings deprived appellant of due process of law and equal protection of law, and that obligations of State Bar contract were impaired.

OPINIONS BELOW

The report of the California State Bar Committee of Bar Examiners tendering a grade of 495/800 instead of per facts and agreement correct grade of 495/600 appears in exhibit "A" in appendix herein.

California law showing that instead of direct appeal to the California Supreme Court, a first law examinee can sue the State Bar for Breach of Contract appears in exhibit "B" in appendix herein.

Exhibit "B-3" in appendix herein indicates a contract suit is preferable redress for wrong as it shows a report of California Senate Judiciary Committee investigation of typical Bar proceedings in grading Bar Examinations showing grades are first determined in points (or measures of accomplishment, like 69 meters in 7 second race). Scoring 800 bar points a day is represented as possible by the State Bar and to be thus used as 100% performance per State Bar measure. The report shows the best 15 examinees per hundred barely scored 560 points a day. A forty year record as exhibited shows conclusively that the Bar uses 800 points for 100% when only about 560 or 600 points per day are possible by Bar measure. Thus to represent points are calibrated so that 800 points can be scored in a day exam constitutes breach of warranty, and requires awarding a grade of 495/600 instead of 495/800.

The Superior Court demurrer ruling, sustaining demurrers without leave to amend and orders of dismissal are set out in exhibits C-1 through C-5 in appendix herein.

The opinion and judgment of the Calif. Court of Appeal is appended in said court's Transcript on appeal herein and are quoted in full in 268 A. C. A. 474 and 74 Cal. Reporter 11, and the opinion with headnotes appears in exhibits E-1 through E-9 in appendix herein. Note Court of Appeal misapprehension of facts confused the headnote writers of said publications, exh. "D."

The order of said Calif. Court of Appeal denying a rehearing on Jan. 20, 1969 is set out in exhibit "F" in appendix herein and in record on appeal.

The Order denying a hearing of the Court of Appeal judgment by the California Supreme Court on Feb. 19, 1969 is set out in exhibit "G" appendix herein.

The Calif. Court of Appeal Order After Final Judgment of 3-12-69 denying a motion to Recall Remittitur and Void the Judgment is set out in exhibit "H" appendix herein.

The order of the California Supreme Court of May 8, 1969 denying the motion-petition after judgment (a) by hearing, or (b) on its own motion is exh. "I" appendix herein.

The original of the above appears in the transcript on appeal herein, i.e. exhibit B-3 on page 26-29 of Superior Court Transcript (hereinafter Sup. Ct. Trans.) included in transcript on appeal to U. S. Supreme Court. Exh."C" appears on pp. 119-121 of Sup. Ct. Trans. Exhibit "E" as mimeographed by Court of Appeal in order. Exh. "F" following Petition for a Rehearing. Exh. "G" following brief of petition for Supreme Court hearing. Exh. "H" after Motion to Recall Remittitur to Court of Appeal. Exh. "I" after Petition-Motion to Cal. Supreme Court to (a) reverse by rehearing or (b) Recall Remittitur and void on court's own motion.

The order of June 20, 1969 of Justice, the Hon. Thurgood Marshall allowing this combined appeal filing is exhibit "J" appendix herein.

JURISDICTION

The Supreme Court has jurisdiction to review the judgment and separately appealable orders after judgment denying Motion to Recall Remittitur and Void, said motions evidently denied in part to prevent fully discussing Federal Questions:

Section 6047 and State Bar Rule VI, Sec. 63 authorized by said section 6047, and Section 6065 of the California Bar Act appearing in California Business and Profession Code were construed and applied contrary to their English and challenged as construed and applied as unconstitutionally repugnant to the 14th Amendment and Article I, Section 10 of the Constitution of the United States.

Section 170(1) was construed and applied in a like unconstitutional manner as well as Rule 25(d) of California Rules of Court.

The ruling, sustaining the demurrers of defendants, by the Superior Court, supra were filed and entered March 1, 1967, and said Superior Court orders of dismissal were filed and entered on or about March 6, 1967. The judgment-opinion of the Calif. Court of Appeals was filed and entered Dec. 23, 1968 and rehearing denied Jan. 20, 1969. The California Supreme Court denied a hearing on Feb. 19, 1969.

The said California Court of Appeals on March 12, 1969 denied a motion to Recall Remittitur

and Void Judgment and pass on Federal Questions more fully.

Notice of Appeal was filed in said California Court of Appeals on April 18, 1969, though a Motion to Recall the Remittitur was pending before the California Supreme Court. When appeal filed in District Court of Appeals; said Recall Motion being a separately appealable issue, said California Supreme Court denied said Motion to Recall on May 8, 1969 (the latest separately appealable order after judgment).

The Notice of Appeal filed April 18, 1969 referred to in the preceding paragraph stated orders after judgment could be considered appealed as well as the then final judgment-opinion, but for certainty of appeal a Supplementary Notice of Appeal called to the attention of the Clerks of the California Supreme Court and the Calif. Court of Appeal was filed June 9, 1969 and appears in the transcript on appeal. The Calif. Supreme Court Clerk declined to file in that court but said filing with the said Calif. Court of Appeal was sufficient. However since part (b), supra of the Petition to the Calif. Supreme Court denied May 8, 1969 requested Calif. Supreme Court Act on its own motion to Recall and Void per case law and said Rule 25(d) as required by the due process clauses of the 14th amendment to U. S. Constitution appellant July 22, 1969 mailed for filing a Notice of Appeal to U. S. Supreme Court of California Supreme Court Order After Judgment of May 8, 1969 denying Recall of Remittitur either by hearing or on its own motion and asked a transcript

on Appeal of said motion only. Again the Calif. Supreme Court Clerk declined to file stating filing through the Calif. Court of Appeal would cover the subject, of a separate appeal to the Calif. Supreme Court alone to act on its own motion to comply with said 14th U. S. Constitution amendment. If correct this matter appealed in Supplementary Notice of appeal filed 6-9-69. The 7-22 Notice filed 7-28-69, and May 8th transcript prepared. See records.

Thus the U. S. Supreme Court has jurisdiction of these 3 separately appealable actions that are combined herein under the provisions of 28 USC, section 1257(2) and said section 1257 generally, and section 2103 of said Code.

Cases believed to sustain the court's jurisdiction are: Younger v. Superior Court, 136 C. 682 (69 P. 485); Schware v. Board of New Mexico State Bar Examiners, 353 U. S. 232; Chaney v. Calif. State Bar, 386 F. 2d 962; Brainiff Airways v. Nebraska State Board, 347 U. S. 590; New York ex rel Bryant v. Zimmerman, 278 U. S. 63 (347 U. S. 598); Great Northern Ry v. Sunburst Oil, 287 U. S. 367; Whitney v. Calif., 274 U. S. 357; Largent v. Texas, 318 U. S. 418; Lawrence v. State Tax Comm., 286 U. S. 276.

Also authority in item F page 113 and 114 of Stern and Gressman's "Supreme Court Practice," Brooklyn Sav. Bk. v. O'Neil, 324 U. S. 697-703. (See authority relative to Calif. Rule of Court 25(d) on statute section of this brief.)

STATUTES INVOLVED

The California Bar Act, Sections 6000 through 6154, containing sections that as construed and applied are submitted to be unconstitutional as repugnant to the 14th Amendment Article I, Section 10 of the Constitution of the United States is published in West's Annotated California Business and Profession Code, Vol. containing Sections 4000 to 6699, pages 310 to 576. Sections 6046 and 6047 of said Code directly involved appear on pages 339-341, and section 6065 on page 363 and State Bar Rule VI, section 63 on page 390. Said sections quoted in full appear on exhibit B-1 in the appendix herein. The sentences and phrases directly involved are:

> Sec. 6047 reading: "Subject to the approval of the Board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4. (Added Statutes of 1939, c. 34, p. 352. sec. 1)"

That part of California State Bar Rule VI, Sec. 63, authorized by sec. 6047 reading:

> "The passing grade shall be seventy per cent (70%) of the highest possible grade." (Emphasis appellant's.)

Sec. 6065 reading: "Any unsuccessful applicant for admission to practice, after he has taken any examination and within four months after the results thereof have been declared, has the right to inspect his examination papers in the city in which he wrote his examination, either at the office of the State Bar or at such place as the board designates.

"The applicant also has the right to inspect the GRADING OF the papers whether the record thereof is marked upon the examination or otherwise." (emphasis appellant's)

Section 170(1) of the Calif. Code of Civil Procedure reads:

"No justice or judge shall sit or act as such in any action or proceeding: (1) to which he is a party----"
(See Younger v. Sup. Ct., 136 C. 682.)

Said section appears on page 269 of Deering's California Codes--Code of Civ. Procedure (annotated) of State of California published in 1959 by Bancroft-Whitney Co., 301 Brannan St., San Francisco, California 94107

California Rules of Court, Rule 25(d) reads:

"A remittitur may be recalled by order

of the reviewing court on its own motion, on motion or petition after notice supported by affidavits, or on stipulation setting forth facts which would justify the granting of a motion.".

It is based on inherent power of the court to protect itself from fraud, imposition and inadvertence derived from case precedents in English Common Law as construed and applied in California courts. It appears in West's Annotated Codes of California, California Rules of Court, Volume 2, 3, part 1, page 311, and is published by West Publishing Co., St. Paul, Minnesota.

When former Spanish Colony California applied for U. S. admission in 1849, the California constitution adopted the U. S. Constitution and the Common Law of England. Thus California took from common law the case precedents that held where a judgment was rendered under misapprehension of facts from false or misleading suggestions of litigants, the court has the inherent power to Recall the Remittitur for years and void the judgment or make a new judgment per correct facts. This is what Calif. Rule of Court 25(d) establishes procedure to accomplish and warns unscrupulous litigants of possibilities flowing from misleading suggestions during court proceedings. (See Article VI, Sec. 6, 4th paragraph, and Article 1, Sec. 3 of Calif. Constitution (1966); 17 So. Calif. Law Review, p. 255; 23 Cal. Law Review 354; Calif. State Bar Journal 26, p. 383; Re Rothman, 14 Cal. 2d 34; Southwestern Inv. v. L. A., 235 P. 2d 388,

and 38 Cal. 2d 623 with dissenting opinion showing thin cleavage between mistake or inadvertence, misapprehension of facts and judicial error and that judicial error is obscure. (See Cal. Constitution, Vol. 1, page 28, Paragraph V of West Publishing Co., and Calif. Statutes 1850, Ch. 95 passed April 13, 1850.) B. E. Witkin's "Calif. Procedure" Vol. III, p. 2370, Appeal Sec. 176 states:

> "In practical effect, therefore, the motion or Petition to recall the remittitur may operate as a belated petition for rehearing on special grounds, without any time limitations. -- the theory is the court does not resume jurisdiction but that the court has never lost jurisdiction, because an order or judgment secured by fraud or false suggestions is a nullity and cannot be deemed to be the order of the court."

QUESTIONS PRESENTED RELATIVE TO APPEAL OF ORDERS AFTER FINAL JUDGMENT.

Exhibit "J" in appendix herein shows order of U. S. Supreme Court Associate Justice the Hon. Thurgood Marshall permitting the filing of this combined appeal by Aug. 6, 1969 without prejudice to the Court's consideration of whether this application has been filed in time to all appeals. Thus due to this provision appellant begins with the question on U. S. Constitutionality of Calif. Rule of Court 25(d) at issue in the timely docketed appeal of the Calif. Supreme Court May 8, 1969 denial order. (See Ques., pg. 4, Supplementary Notice of Appeal of Orders After Judgment, filed June 9, 1969--in Certified Record on Appeal.) See short cert. Rec. of May 8, 1969 Appeal only, prepared 7-28-69.

(A) In short form. Is California Rule of Court 25(d) as construed and applied by the California Supreme Court and the California Court of Appeal herein repugnant or void as repugnant to the 14th amendment of the U. S. Constitution?

(B) The question in longer form: Does the Calif. Supreme Court's construing and applying Calif. Rule of Court 25(d) as herein wherein it holds in effect that it can deny a valid request to (a) hear a Calif. Court of Appeal denial of a motion to Recall Remittitur and void judgment made under misapprehension of facts from misleading statements of defendants and inadvertently just copying the defendant's briefs in the opinion, and/or (b) Act on

the Calif. Supreme Court's reserved Rule and equity power to act on its own motion to Recall Remittitur and Void Judgment when petition-motion informed of duty to act, constitute such a vague, indefinite and unequally enforced Rule of Court having the force of law that said Rule of Court 25(d) as construed and applied is repugnant or void as repugnant to the 14th amendment and or Article 1, Sec. 10 (impairing contract obligations) of the U. S. Constitution as such construction and application deprived appellant of property in cause of action and equal protection of law and due process guaranteed by the said 14th amendment whereas after knowledge of recall and voidability said court and its political affiliates gained coercive power of equal value over defendants for years? (i. e. even new set of Justices can void judgment for years.)

QUESTIONS PRESENTED RELATIVE TO JUDGMENT.

If the U. S. Supreme Court excuses late docketing of judgment appealed as inadvertence of law student and permits appellant to proceed under the relied on Stern and Gressman authoritative recent book "U. S. Supreme Court Practice" as tentatively agreed to by exhibit "J" herein, the Order of Associate Justice, the Hon. Thurgood Marshall, the following questions are presented relative to the appealed judgment herein: (See Notice of appeal, April 18, 1969--Record on Appeal.)

Preliminarily: Mathematical authority (see appendix pages A-10 through A-13a of appellant's Opening Brief in California Appeal Court, part of the Record before the U. S. Supreme Court) states:

> "No topic in elementary mathematics seems to create the same degree of befuddlement as that related to problems involving per cent. The trouble with per cent problems is seldom mathematical, since no new mathematics is needed to solve them, but usually interpretational."
> (Arithmetic by F. Mueller, Prentice Hall, pp. 305.)

The appealed judgment is based on the befuddled mathematical error that a per cent expression like 100% can be used as the base for another

percent expression like 70%. A per cent expression always involves the question "Percent of what?" 100% standing alone without a base answering the question has no mathematical value and is thus vague, ambiguous, and indefinite in mathematical terminology and when used as the base of 70% requirement, the 70% has no ascertainable value.

Thus since the questions on this subject fully expounded would be long and difficult to follow, appellant refers to the questions propounded at length in the Notice of Appeal in certified record on appeal and by reference makes same a part hereof and only poses the following short identification questions that will be further discussed in the following Statement of the Case.

(1) Does defining the "highest possible grade" as meaning the 100% grade make Calif. State Bar Rule VI, sec. 63 so vague, ambiguous, and indefinite as 100% could be over 50 times the possible if "B" (the base and maximum points scorable) in the formula used of $\frac{P}{B} = \frac{R}{1.00}$ is set at over 50 times the possible that said rule as court defined in 268 A.C.A. 474 having the force of law is void as repugnant to the provisions of the 14th amendment and or Article I, Sec. 10 of U. S. Constitution? i.e., the formula shows "B" is equated to 1.00 whether "B" is easy zero or an impossible trillion, and unless "B" is proved possible, the "B" may be over 50 times the possible and a Justice could only make 2% on the bar examination so out of line with the possible; this makes it apparent the points of performance used for 100% must be proved possible

before being used as the 100% performance. Mathematically when the values of "R" only rises as high as 80 upon calculation, it is prima facie evidence the value of "B" (performance in points or meters in a race) that is used for equation to 100% performance is too high to be realistic and it is a breach of warranty to describe it as possible.

For example, if dictating 50 perfect 3,000 word case opinions was taken as the requirement for 100% performance or "B" in 8 hours, what is the highest percent grade a U. S. Supreme Court Justice could secure on such an examination, and could such examination be described as 100% possible without a breach of warranty occurring?

(2) Does Section 6047 (exhibit B-2 appendix herein) of the California Bar Act authorizing the Committee of Bar Examiners to determine the percent grade by rules and exhibits B-3a and B-3b appendix herein showing the Committee changes passing requirements from time to time during grading make said statute as construed and applied repugnant to the 14th Amendment and or Article I, Sec. 10 of the U. S. Constitution?

(3) The State Bar construes and applies section 6065 of the State Bar Act (exh. B-2 of appendix herein), as only requiring a statement as shown in exhibit "A" in appendix herein. The English of the statute shows it replaces the former open court oral examinations before the public, and thus indicates examinees should have the right to see how the other examinees comparative

competitive papers were marked to see if a grade like 495/800 is correct, i. e. whether a 495 rating appears to be in line with other graded papers and whether there is any possibility of justifying use of 800 points as the 100% performance, does it not?

Thus as said section is interpreted and applied by the State Bar, is the statute void as repugnant to the 14th amendment and or Article I, Section 10 of the Constitution of the United States, because concealing the examination papers enables the State Bar to pass some examinees on blank paper when 100% performance is equated to zero points momentarily during grading and then 50 times the possible can be used for 100% to unfairly exclude other, and thus so construed and applied does not give equal protection of law or property or due process of law when evaluating education in law?

(4) Did the Superior Court Hearing Judge refusal to disqualify himself per timely affidavit calling his attention to the fact some defendants were sued as his agent or alumni class representative make his refusal to disqualify himself per the requirements of Section 170(1) of the California Code of Civil Procedure make said statute void as construed and applied as repugnant to the 14th amendment and or Article I, Sec. 10 of the United States Constitution?

STATEMENT OF CASE RELATIVE TO ORDER OF MAY 8, 1969 -- APPEALED

As exhibit "J" Appendix herein shows, the appeal docketed within 90 days per Oct. 1967 amended Rules U.S. Supreme Court is that appealing the above Order directly from the Calif. Supreme Court regarding the U. S. Constitutionality of Calif. Rule of Court 25(d) as construed and applied herein. (See Questions "A" and "B" page 15 this brief.)

The right to have the Remittitur Recalled and the judgment appealed herein voided arose when defendants risked making misleading and/or false suggestions of facts to the Court, which the court copied into the Superior Court Memorandum of Decision, exhibit "C" appendix herein, and copied into the opinion of the Calif. Court of Appeal, exhibit "E" appendix herein. Records are also appended to certified transcript on appeal herein.

Defendants used influence to have the case assigned for hearing by a Judge who was an alumnus of Harvard, Stanford or USC mentioned in footnote of "E-4" appendix herein whose alumni were sued for furnishing agents Messrs. Halsted, Darling, and Pruitt (named defendants) to use State Bar Offices to implement operation of said alumni de facto law firms and public relations business and or other Sherman and Clayton Act combinations in common-law restraint of competition damaging plaintiff as alleged in the complaint.

The case was assigned to a stranger to appellant, the Hon. Robert W. Kenny. Appellant asked what universities the judge graduated from or was a student at. Judge Kenny replied USC and Stanford, and appellant asked time to file a declaration that read in pertinent part:

> "Judge Robert Kenny states he has attended the University of Southern California, and is an alumni or legally educated at Stanford University. -- (He) is disqualified from hearing this matter under the provisions of Calif. Code of Civil Procedure, Section 170(1), i. e. he is a party to the action -- in that Mr. Halsted is sued not only as an officer of the State Bar Board of Governors, but also as a representative of a class action against the alumni or students of Stanford University using State Bar Offices to practice law and/or operate an influence business (public relations) for profit" -(Mr. Darling sued likewise as to USC).

The declaration 3 pages long made it clear agency or combinations in common-law, Sherman and Clayton Act type (Calif. has equivalent laws) were damaging appellant per complaint, and demanded disqualification.

Judge Kenny just glanced at the document, held it insufficient as a matter of law, sat, and

under guise of summation misstated the complaint theory, condemned his own misstatement and dismissed the action.

When the matter was appealed the Harvard Club Reply Brief, pages 11 and 12 stated:

> "Plaintiff's declaration to disqualify the trial judge, the Hon. Robert W. Kenny, who heard and ruled on Defendant's general demurrers (CT pp. 36-39) urged, in effect, that Judge Kenny was a party in interest. Plaintiff's declaration does not allege that the Hon. Robert W. Kenny was a graduate of Harvard University or a member of defendant Harvard Club. On the contrary, it alleges that the Hon. Kenny attended the Univ. of So. Calif. and received his legal education at Stanford Univ. (CT p. 36, lines 30-32)
>
> "Since the facts alleged with respect to the purported disqualification of the Hon. Robert W. Kenny were undisputed, the question of disqualification was one of law rather than of fact.
>
> "The Hon. Kenny reviewed the affidavit and found it insufficient as a matter of law and denied the motion to be disqualified (RT p. 2, lines 7-9). We submit as a matter of law the Hon. Robert.

W. Kenny was not disqualified to participate as a judge in this action."

The U. S. Supreme Court should note the Harvard Club attorney avows "Since the facts alleged with respect to the purported disqualification Judge Kenny were undisputed (that is were taken as true), the question of disqualification was one of law rather than of fact" and also note he conceals from the court defendants thus admitted Judge Kenny was sued along with the entire alumni of USC and Stanford, but states instead Judge Kenny was only considering some remote interest. (The complaint sued Harvard, USC and Stanford alumni as a combination. Disqualification of one applied to all.)

Now exhibit "E-9," item 5 appendix herein (268 A. C. A. 482) shows the Calif. Court of Appeal Opinion just substantially copied the misleading and/or false suggestion of the Harvard Club attorney without noting the declaration stated Judge Kenny was actually sued through an agent or class representative (Judge Kenny could have been substituted for Mr. Halsted and/or Mr. Darling).

The State Bar attorney in his brief in Reply in Calif. Court of Appeal, page 12 misleads the court in a like manner inferring the declaration was only for prejudice.

Case precedents first from common-law and now from prior Calif. case decisions made such misleading suggestions grounds for recalling a remittitur and changing the decision to conform to

facts. Upon Recall the Code of Civil Procedure of Calif., Sec. 170(1) make such judgments absolutely void.

The complaint shows appellant was sueing for the State Bar breach of warranty 800 points were possible to score in a seven hour examination per State Bar calibration of measure of points. Appellant complaint when properly read averred that where 40 year State Bar records show only 70% and 80% was made by State Bar best examinees it was prima facie evidence there was a breach of warranty that it was possible to score 800 points, the performance the State Bar took for a 100% grade. The disqualified Judge Kenny used his illegal sitting to summarize the complaint into a meaningless contest by improperly stating values in percent grades without setting forth a base showing what the percent expressions purported to evaluate, and thus acting on defendant misleading suggestions made a judgment on misapprehension of facts.

The Petition-Motion to Calif. Supreme Court filed March 19, 1969 (denied May 8th) began by invoking a duty under Calif. Rule of Court 25(d) when construed and applied per the requirements of the 14th Amendment to U. S. Constitution it read

> (a) "Pursuant to Rules of Court (Calif.), Rules 25(d), 28 and 41, Plaintiff-Appellant (hereinafter petitioner) Tilden W. Johnson petitions for a hearing in the above entitled matter (Recall Remittitur and Void)

following a denial without a hearing by District Court of Appeal (2nd Appellate Dist., State of Calif.) of March 12, 1969, see last page herein."

(b). "Per the laws of Calif. and 14th amendment of Constitution of U.S.A., it is the duty of the California Supreme Court to 'Recall the Remittitur and Void the Judgment' appealed herein. Since argument cannot save a void judgment or make it more void, it is possible the California Supreme Court can void the judgment with an opinion without a hearing, and at least this Action should be taken as shown by points and authorities, and declaration herein."

The petition page 6, lines 7 thru 10 charged the Calif. Supreme Court with knowledge the defendants admitted Judge Kenny was a party and sued but had used misleading suggestion to deceive the court and in fact stipulated to Recall and Voiding by failing to answer drrectly the allegation Judge Kenny was sued as a party. The petition also made certain the disqualifying declaration appeared in the petition and charged the Calif. Supreme Court with knowledge of duty to act as requested and Recall the Remittitur and void the Judgment per said Rule 25(d) summation of inherent common-law power to do justice and provide equal protection of law and property and due process.

The questions "A" and "B" on page 15 of this brief and the Statute Section herein and this statement raises the issue whether Calif. Rule of Court 25(d) which represents common-law duties of the Court can be construed and applied to let the court pick up coercive power over defendants for years because anytime it may act on its own motion to leave them subject to judgment to appellant by recall and voiding while in the meantime appellant is deprived of a chance to use the courts to establish examination truth and secure damages for breach of contracts and/or torts. (See argument in Substantial Federal Question section herein.).

Appellant submits this Order of May 8, 1969 is properly appealed from the Calif. Supreme Court, that became an affirming Court when it failed to hear and reverse the Calif. Court of Appeal March 12, 1969 denial of motion without a hearing, (b) Calif. Rule of Court 25(d) contains vast common-law power by reserving right to act on its own motion to void judgments, and a request to exercise such power independently was a direct request to the Calif. Supreme Court and for failure to act that Court is responsible.

The U. S. Supreme Court will note a separate certified transcript on appeal containing only the Petition-Motion denied by Calif. Supreme Court pursuant to a special Notice of Appeal filed July 28, 1969 and Motion denied by the Calif. Court of Appeal is on record. While addressed to the Clerk of the Calif. Supreme Court he insisted the Calif. Court of Appeal prepare it as said court had the records.

However it is apparent the request (b) the Supreme Court act on its own motion which it failed to do is a record appealable to the Calif. Supreme Court alone.

STATEMENT OF CASE RELATIVE TO JUDGMENT APPEALED

Appellant-plaintiff was reared on a farm, and per Lincoln precedent made use of time at night to study law using correspondence law school texts and codes priorly used by a relative. It was useful knowledge to operate a business. Several years of home study was supplemented by two years of attendance and in 1947 appellant graduated from UCLA with a Business Administration Degree which supplemented with years of Engineering and Construction, iron and wood, experience resulted in a Building Contractor's License where more law was needed and as a result the correspondence law school study was completed formally and a LLB Degree secured in Law in 1949.

Application to take the Calif. Bar Examination was made, but appellant was told correspondence law school graduates had to first take a first year law student's examination in Contract, Torts, and Criminal Law. Eight cases were given in seven hours, 4 case each $3\frac{1}{2}$ hours. Appellant was notified his grade was $\frac{392}{800} = \frac{.49}{1.00}$ the formula used being $\frac{P}{B} = \frac{R}{1.00}$ all of which meant a State Bar Grade of 392/800 or 49% when the fractional grade 392/800 was expressed in equivalent percent value. At that

time (1949-51) appellant did not know the best attorneys and Judges in California only scored 500 to 560 points. If appellant had known that fact in 1949 (see exhibit "B-3-a-b-c" in appendix herein) and that the State Bar was sueable and not immune to suit, appellant could have sued for breach of warranty 800 points were possible and have sued for a grade of 392/560 or 70%.

In 1963 to further review law needed in Engineering and Construction business, appellant again took the Bar examination and when tendered a grade of 495/800, sued for breach of warranty or contract 800 points were possible to score in said 7 hour bar examination in Contract, Torts, and Criminal Law.

In 1949 appellant went on the theory that if Bar examinations were improperly calibrated and administered the big universities would stop the practice to prevent imposition on their graduates. Condition encountered in the courts and in business by 1963 charged appellant with knowledge State and Federal Clayton and Sherman Act violations of some nature was going on and when the suit was filed Calif. Cartwright and Unfair Trade causes were added to the contract and fraud and common-law restraint causes and DOES included. By 1966 appellant had discovered, big universities were owners of insurance stock and so were major foundations and backscratching existed between those organizations. Further investigation showed how big universities could practice law and public relations through alumni associations de facto and secure

fees from foundation gifts and businessmen gifts. It was then clear why big universities did not clean up Bar Examination practice, i. e. they were practicing law de facto in competition with their students and others and using Bar Associations as offices for the activity, and alumni are so sued in this suit. How they attempted to railroad my case out of California Courts without trying the issues therein is set forth in the Case Statement relative to the Calif. Supreme Court Order of May 8, 1969 and questions "A" and "B" on page 15 of this brief.

Defendants noting the original and amended complaint (see Superior Ct. Transcript in Record pp. 1-28) was phrased to raise 14th amendment (U. S. Const.) due process and equal protection issues unless fair inspection of records was permitted urged State Bar Bus. & Prof. Code Section 6068 requiring the support of the U. S. Constitution including the said 14th amendment, required the Calif. State Bar to treat all examinees equally by continuing to use 800 points as 100% performance even though their records show only about 560 points are possible. Arguing that if the State Bar mis-rated earlier applicants, the State Bar to treat all equally must continue the inequity. Note section 6068 appears in the Superior Court memorandum of decision and the Calif. Court of Appeals Opinion that called Judge Kenny's use of it a succinct statement of necessity to continue in inequity.

Thus the 14th amendment, supra was raised in the original complaint, Third Cause, p. 7 of Superior Ct. Trans which incorporated by reference preceeding causes. It read in part lines 5-10:

> "When the State Bar (Cal.) was created by the Legislature, it was delegated -- duties -- of enforcing -- standards of conduct for the benefit of the public including the plaintiff -- the State Bar has negligently, performed its duties to the public including the plaintiff." (Lack due process and equal protection of law cited.)

The amended complaint (same transcript) was even more specific in Para. XI, p. 16, lines 30-32. it alleged:

> "Plaintiff relied on said contract and statements in other Committee (Bar) literature that the examination was fair and would be fairly graded and the provisions of the Bar Act (Calif.) complied with." (Inc. 14th, supra.)

Para. XIII (same transcript) p. 17 was breach paragraph and alleged:

> "The State Bar (Calif.) refused -- to permit plaintiff to examine the grading of the papers. This -- constituted a breach of contract or warranty of a fair examination, fairly graded and the grading to be inspected per State law so plaintiff could determine how the mythical grade of 100% was arrived at ..."

Here complaint allegation of non-compliance with State Law (Bar Act) plead violation of the 14th amendment, supra as said State Bar sec. 6068 requires upholding of said 14th amendment.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Questions "A" and "B" on page 15 of this brief questioning whether Calif. Rule of Court 25(d) as construed and applied by Calif. Supreme Court, and the Calif. Court of Appeals is void as repugnant to the due process and equal protection of law required of California by the 14th amendment to the U. S. Constitution poses a question vital to the National Interest. The inherent power of court to discipline unscrupulous litigants for making misleading and/or false suggestions to a court was arrived at by case decisions profiting from centuries of court experience. It is necessary for the courts to retain this power and utilize it to improve the quality of representations made in litigation.

However, as construed and applied the said California courts retain the power as a coercive threat to all litigants, but the said California Courts construe and apply the right to mean it is for the benefit of the court exclusively, and not a right of all litigants to due process and equal protection of law.

In re Rothrock, 14 Cal. 2d 34 (1939), the California Supreme Court on a petition for recall of remittitur, directed recall and correction of a judgment to allow a new trial on facts similar to herein. However in Southwestern Inv. Corp. v. City of L. A., 235 P. 2d 383, a California Court of Appeal Recalled a Remittitur for inadvertence or

mistake or misapprehension of fact, but the Calif. Supreme Court in 38 Cal. 2d 623 reversed clearly indicating the Calif. Supreme Court alone controls the immense power derived from right to Recall a Remittitur. Justice Carter filed a dissenting opinion that clearly gives a better compliance with due process and equal protection of law as required by the 14th Amendment to the U. S. Constitution. Justice Carter stated:

> "My theory is that if an appellate court makes a mistake in stating the facts of a case which results in a decision contrary to what should have been reached had the facts been correctly stated, it should have the power, and it is the duty of such court when the true facts are called to its attention, to recall the remittitur and render a decision in accordance with the correct state of facts. I believe this should be the rule regardless of whether the misstatement of fact in the prior decision is due to ignorance, caprice or fraud on the part of the court or the lawyers or litigants involved." 38 Cal. 2d 632

The quoted procedure if followed would provide equal protection of law and due process to all litigants, whereas if a Supreme Court after knowledge of a judgment based on misapprehension of facts lets the judgment stand but reserves the right as in California Rule of Court 25(d) to change its mind and recall for years, it is apparent the plaintiff is deprived of the use of the courts to promote

justice and protection of his rights whereas highest courts in a state and their university supporters gain coercive powers over the defendants equal to the face of the complaint. Evidence shows Universities are in fact practicing law and in the insurance business and so are major foundations. As shown by disqualifying affidavit herein several major universities have collected from 300 million to a billion dollars while former employes of universities sat on high courts, sitting on possibility of recalling equal amounts of judgments based on misleading or false statement of facts. This condition is what led to Magna Carta in King John's time and should now be investigated by the U. S. Supreme Court by assuming jurisdiction herein.

It is submitted the rule should be that in cases as herein showing misapprehension of facts, the California Supreme Court to comply with the 14th Amendment to U. S. Constitution should be required to recall remittiturs and void and direct new trial as a matter of course.

Questions 1, 2, 3, and 4 - Judgment

Exhibit B-3-a-b-c in appendix herein shows an examination of bar applicants process highly repugnant to the due process and equal protection of laws provided by the 14th Amendment to the U. S. Constitution. Big universities are given inside information by the examinations following the cases presented by said universities whereas correspondence school graduates are not even given access

to examination or inspection of all passed examination papers.

Much of the rioting and disorder and student dissatisfaction in big universities in 1969 is due to development of pass or fail examinations with passed papers being destroyed. Without the necessity to show what in the best performances of best students and thus what should represent a 100% grade, the pass-fail examinations degenerate into if you will do 70% of 150% of what is possible you will be passed. Translated mathematically this means if you do 105% of what is possible you will be passed. (An impossibility.) All applicants are failed automatically and those given inside easier tasks are permitted to hold themselves out as passing and superior personages. Thus students riot over some cause and occupy big university buildings and records and while therein take the keys to the examination to be given (an inside track).

The elimination of such examinations by establishing possibility of suing for breach of representation of what is possible (for example representing 800 points are possible whereas only 600 to 600 points are possible) is what the U. S. A needs.

In this case exhibit "A" appended hereto shows the State had declared the highest possible grade as the fraction 800/800 i.e. scoring 800 points but when suit began for breach of warranty 800 points were possible, the State Bar attorney pointed out a Court ruling the highest possible grade

meant the 100% grade would be given post facto law destroying the obligation raised by former representations. That process violated Article I, section 10 of the U. S. Constitution as well as due process and equal protection of law per the 14th Amendment to U. S. Constitution, especially when the Superior Court and the Calif. Court of Appeals exhibit "C" and "E" appendix herein show the decision was justified by quoting Calif. section 6060 of Bus. and Prof. Code which exhibit "B" shows required supporting the U. S. Constitution, including the 14th Amendment, required the State Bar to continue to use 800 points for 100%, even though 40 year records show only about 560 points are possible, so all will be treated equally. It is submitted the process is now and always has been repugnant to the 14th Amendment.

Appellant beginning in Superior Court vigorously argued court and bar methods violated same. See Motion for a new trial or Rehearing in Superior Court transcript pages 128-130 part of U. S. Supreme Court record herein. Especially see Petition to Calif. Supreme Court denied May 8, 1969 (A motion after final judgment).

CONCLUSION

Based on the foregoing, appellant respectfully submits that the inequities and issues of national importance presented should prompt the United States Supreme Court to exercise its jurisdiction in this case.

Respectfully submitted,

TILDEN W JOHNSON

In Propria Persona

THE COMMITTEE OF BAR EXAMINERS

OF THE STATE BAR OF CALIFORNIA

SAN FRANCISCO 2

LOS ANGELES 17

August 16, 1963

To: Applicant No. F- 780 Code No. 5541

Grade: 491 (points out of 800)

The Committee of Bar Examiners after careful consideration of your papers regrets to inform you that you did not pass the June 1963 First-Year Law Students' Examination. Your total grade is indicated above. A grade of 70% (560 points) was required for passing. If your average grade is between 65% and 70%, your answers have been carefully reviewed by an independent reappraiser.

In order to take the bar examination you must be entitled to credit for four years of law study. No credit can be given you at this time, and only one year's credit will be given you when you do pass the first-year examination. You must study law for at least three years after passing the first-year examination. Please see Sections 61 and 91(4) of the Rules Regulating Admission to Practice Law in California.

A grade sheet is enclosed for your information showing your individual grade on each question.

The next first-year examination will be given on June 29, 1964. Applications must be filed between December 30, 1963, and April 29, 1964.

For the Committee of Bar Examiners.

H. Law II Miller,
Secretary

MIM:lm
Enclosure

Question No.	Subject	Grade
1	Contracts	45
2	Torts	55
3	Criminal Law	65
4	Contracts	60
5	Torts	65
6	Criminal Law	70
7	Contracts	70
8	Torts	65
	TOTAL	495

NOTE: TOTAL POSSIBLE GRADE: 800 Your Grade 491/800

Number of points required to pass the June 1963 First-Year Law Students' Examination: 560

Plaintiff-Appellant Note:

State Bar representations above positively allege 800 points are possible and the highest possible number of points grade will represent mathematically the 100% grade. Clearly this representation constituted a State Bar Contract or Warranty 800 points were possible, and since overwhelming evidence shows only 600 points are possible in time of examination, plaintiff-appellant sued for a grade of approximately $\frac{495}{600}$ which equals 82.5%; i.e. $\frac{I}{E} = \frac{R}{100}$, the formula used above.

EXH. "A"

The State Bar Act

An act to add Chapter 4, comprising sections 6000 to 6154, inclusive, to Division III and to add section 30018 to Division XXX of the Business and Professions Code, relating to the State Bar of California, its organization, government, membership and powers, the practice of law and the solicitation of legal business, and repealing acts and parts of acts specified herein.

Approved February 3, 1939. Statutes 1939, ch. 34, p. 347. In effect Sept. 19 1939. Amended Statutes 1939, ch. 980.

[Sections Amended subsequent to 1939 are indicated.]

The people of the State of California do enact as follows:

Section 1. Chapter 4, comprising sections 6000 to 6154, inclusive, is hereby added to Division III of the Business and Professions Code to read as follows:

CHAPTER 4. ATTORNEYS.

Article 1. General Provisions.

6000. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act.

Origin: State Bar Act, sec. 1.

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

6008.4. All powers granted to the State Bar by Sections 6001 and 6008.3 may be exercised and carried out by action of its board of governors. In any resolution, indenture, contract, agreement, or other instrument providing for, creating, or otherwise relating to, any obligation of the State Bar, the board may make, fix, and provide such terms, conditions, covenants, restrictions, and other provisions as the board deems necessary or desirable to facilitate the creation, issuance, or sale of such obligation or to provide for the payment or security of such obligation and any interest thereon, including, but not limited to, covenants and agreements relating to fixing and maintaining membership fees. (Added by Stats. 1957, ch. 1526.)

Exh. "B-1"

Article 3. Committees of the State Bar.

6040. The board of governors may create local administrative committees and delegate to them such of its powers and duties as seems advisable. The board may in its discretion divide any committee into units or sections with concurrent powers and duties in order to handle the work of the committee more expeditiously. The board may also prescribe the powers of the committee and the units or sections thereof.

Origin: State Bar Act, sec. 30.

6046. The board may establish an examining committee having the power:

(a) To examine all applicants for admission to practice law.

(b) To administer the requirements for admission to practice.

(c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter.

Origin: State Bar Act, sec. 24.

6047. Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4.

Origin: State Bar Act, sec. 24.1.

RULE VI. First-Year Law Students' Examination

Section 63. The first-year examination shall be conducted either by the committee or under its supervision or pursuant to its direction each year simultaneously in Los Angeles and in San Francisco, beginning on the last Monday in June. The examination shall be written, and shall consist of such questions as the committee may select on the subjects of contracts, torts, and criminal law. The passing grade shall be seventy per cent (70%) of the highest possible grade.

STATE BAR ACT SECTIONS

6065. Any unsuccessful applicant for admission to practice, after he has taken any examination and within four months after the results thereof have been declared, has the right to inspect his examination papers in the city in which he wrote his examination, either at the office of the State Bar or at such place as the board designates.

The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

Origin: State Bar Act, sec. 38.

6068. It is the duty of an attorney:

(a) To support the Constitution and laws of the United States and of this State.

(b) To maintain the respect due to the courts of justice and judicial officers.

EXH "B-3"

The Senate Interim Judiciary Committee made a thorough and exhaustive investigation of the October, 1951, bar examination. The Senate Interim Committee: Burt W. Busch, of Lakeport; Earl D. Desmond of Sacramento; Gerald J. O'Gara of San Francisco; A. W. Way of Eureka, and Jack B. Tenney of Los Angeles.

The Committee of Bar Examiners cooperated fully in this investigation and placed all of its records at the disposal of the committee. A hearing was held in Los Angeles on December 31, 1951, and another in San Francisco on January 31, 1952. The following resolution was adopted by the Senate Interim Judiciary Committee at the close of its hearing in San Francisco.

RESOLUTION

(Adopted by the Senate Interim Judiciary Committee, February 2, 1952.)

WHEREAS, 1041 law students took the California bar examination in October, 1951, and only 391 passed. This is 37.5 per cent, the lowest since October, 1946, which was 37.1 per cent. It is 13 per cent below the 50.9 per cent average for fall examinations in the five-year period, 1946-50.

WHEREAS, this Committee has carefully investigated the reason for this low percentage and has found the following facts and reached the following conclusions:

1. There is no suggestion of dishonesty, favoritism, intentional severity or carelessness in the conduct of the examination.

2. The fact that only 160 or 15 per cent of those taking the examination attained the passing grade of 70 per cent on first reading was due to two major factors:

(a) Unusual difficulty in at least three of the questions.

(b) Strictness of grading.

3. After the original grading, three reappraisers reviewed 326 papers graded between 63.75 and 69.9 per cent. They passed 231 students, 59 per cent of all the successful candidates. This is radical departure from the original purpose of reappraisement which was to remedy inequities in a relatively few borderline cases.

4. The process of reappraisement in this examination was criticized for these reasons:

(a) Reappraisement is not authorized, prescribed, or governed by the Business and Professions Code or the rules governing the State Bar. It is a procedure for which the Committee of Bar Examiners makes its own rules and standards from year to year.

B-3a

(b) The standard used on reappraisement is not fixed, definite or certain. It is subject to the broad discretion of each reappraiser in individual cases.

(c) Each of the three reappraisers was competent and conscientious. However, each had his own temperament, viewpoint and subjective standards. One was relatively strict, one less strict, and one liberal in passing papers. Since in most cases the reappraisers acted independently, this lack of uniformity may have worked substantially to the advantage of certain students and the disadvantage of others. In addition, it appears that certain students whose original grades were between 1560 and 1610, or 65 per cent and 67.1 per cent, and whose papers were reviewed and failed on or before November 25, 1951, may have been more strictly reappraised than students whose papers were reviewed and passed on and after November 26, 1951, the date when a lower minimum review grade of 63.75 per cent was established.

(d) Many of the persons adversely affected by the decision of the reappraisers are veterans of World War II who sacrificed several years of their normal scholastic life in the service of their country.

NOW, THEREFORE, BE IT RESOLVED, that this Committee requests the Supreme Court of California to:

(a) Determine, after investigation and hearing, whether the 47 students whose original marks were between 65 and 67.1 per cent and who were failed by the Board of Reappraisers should not be admitted to the bar without further examination.

(b) Review the papers of students receiving original marks between 63.75 and 65 per cent to determine if the procedures which were followed with regard to this group resulted in substantial injustice to any of the 48 applicants who were failed.

(c) Make such further inquiry concerning the papers between 60 and 63.75 per cent as will satisfy the Court that no students in that category should have been reappraised and passed. And be it

FURTHER RESOLVED, that the Court and the Committee of Bar Examiners are requested to establish the following rules for future student bar examinations:

(a) Require submission of the authors' analyses of all questions used, after the bar examination, but prior to the grading of the examination, to all of the law schools in California for evaluation and criticism.

(b) Require the giving of a reasonable number of alternative questions in each examination. And be it

FURTHER RESOLVED, that the Court and the Committee of Bar

B-3-6

Examiners are requested to give consideration and study to the following suggestions which have been made to this committee:

(a) Credit each applicant who has failed to obtain a passing average with each subject in which he has received a passing grade. Limit reexaminations to subjects in which an unsuccessful applicant has failed.

(b) Appoint a full-time Committee of Bar Examiners to serve under the direction of the Supreme Court of California, and to be responsible only to such Court.

(c) Establish a base, perhaps at a level 5 per cent below the average percentage of success in the bar examinations of the preceding five years, above which there must be no failures.

(d) Whenever an average grade of all applicants who have answered a particular question is 10 per cent or more below the average of the grades for all of the other questions, the percentage of difference between the two shall be credited to each answer to the question; i. e., if the average grade of all other questions is 50 per cent and the average for a particular question is 40 per cent, then 10 per cent shall be added to each grade previously awarded for the particular question.

(e) Establish a policy, implemented by rules, which will make standards of questions, grading, and reappraisal more uniform from year to year.

(f) Encourage examinations which most of the qualified applicants can pass without selective reappraisement.

(g) Establish more uniform standards and better coordinated procedures on reappraisemen . And be it

FURTHER RESOLVED, that a copy of this resolution be sent to the Supreme Court of California, the State Bar of California, and the Committee of Bar Examiners.

B-3c

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TILDEN W. JOHNSON, Plaintiff, vs. STATE BAR OF CALIFORNIA, a public corporation, et al., Defendants.	NO. 831572 RULING ON DEMURRERS TO AND MOTIONS TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT.

The original complaint in this matter was filed January 13, 1964. At that time, the sole named defendant was the State Bar of California.

Plaintiff holds a B.S. degree in Business Administration from U.C.L.A. (1947). He has studied law in his spare time since the 1920s. In 1945 he enrolled in the American Extension School of Law. He graduated from this institution in 1949, holding a high scholastic record (par. IV, original complaint).

Plaintiff took the first year law student examinations in June 1949, and also in 1950, 1951

and 1953. He did not pass.

On June 24, 1963, after paying the necessary fees, he again took the first year law student examination. The gravamen of plaintiff's complaint against the State Bar arises out of his interpretation of Business and Professions Code, Section 6068 subsection 63 which provides that in first year examinations "the passing grade shall be 70% of the highest possible grade. The State Bar argues that the "highest possible grade" would be 100%. The plaintiff earnestly asks this Court to consider that 100% is not a "possible grade; instead asks the Court to assume that 80% was the highest possible grade. Since the plaintiff obtained a score of 61.875% at the June 24, 1963, examination, "plaintiff had actually performed 61.875/80 or 77.3% of the highest possible grade." By this reasoning, plaintiff reaches the conclusion that he had attained a grade of over 70% and therefore should have been passed.

However, this Court upholds the contention of the State Bar, namely, that the required passing grade is 70% of 100% (and not 80% or any other arbitrary figure assumed by the plaintiff). For this reason the plaintiff is unable legally to state a cause of action. His allegations of damages necessarily fall with this holding.

The Harvard Club of Southern California and the individual defendants, Hugh W. Darling, Samuel O. Pruitt, Jr., and A. Stevens Halsted, Jr., alleged to be members or recent members of the State Board of Bar Governors, were not named in the original complaint but appear in this litigation for the first time as defendants in the

amended first complaint filed by the plaintiff on January 5, 1967.

The demurrer of the Harvard Club is sustained on the ground that it is barred by the statute of limitations. The time for an action based either on fraud, oral contract, or defamation had run before the filing of the amended complaint. The asserted wrong done the plaintiff must date from June 24, 1963, when he most recently took the first year law student examination.

The demurrers of the individual defendants must be sustained upon the authority of Government Code Section 820.2 which provides that public employees are not liable for injuries resulting from their discretionary acts.

Plaintiff has asked leave to amend. However, since the questions involved in the complaint are solely matters of law, the benefits to be gained by the plaintiff by further amendment are purely illusory. If plaintiff desires to have his novel interpretation of the 70% rule of B. & P. Sec. 6068(63) ultimately resolved by the highest courts in this State, his record on appeal will best be made a definite and final ruling of this Court at this time. The demurrers of the defendants will therefore be sustained without leave to amend and the motions to strike ordered off calendar. Counsel for defendants are to prepare judgments in accordance with this opinion.

Dated: March 1, 1967.

/s/ Robert W. Kenny
ROBERT W. KENNY
Judge of the Superior Court

126 F I L E D Mar 6 1967
William G. Sharp, County Clerk
by /s/ Jerrell A. Stephens, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TILDEN W. JOHNSON, Plaintiff, vs. STATE BAR OF CALIFORNIA, a public corporation, et al., Defendants.	No. 831,572 JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

The demurrers of Defendant Harvard Club of Southern California to Plaintiff's First Amended Complaint having been sustained without leave to amend by Order of this Court on March 1, 1967, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED that this action be and the same is hereby dismissed as to Defendant Harvard Club of Southern California; that Plaintiff take nothing by his action against Defendant Harvard Club of Southern California and that Defendant Harvard Club of Southern California have and recover of

of and from Plaintiff its costs and disbursements herein which are hereby taxed in the sum of $_____.

DATED: March 6, 1967.

/s/ Robert W. Kenney
Judge of the Superior Court

127 F I L E D Mar 7 1967
William G. Sharp, County Clerk
by /s/ Jerrell A. Stephens, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TILDEN W. JOHNSON, Plaintiff, vs. STATE BAR OF CALIFORNIA, a public corporation, et al., Defendants.	NO. 831,572 JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

The demurrers of Defendants State Bar of California, A. Stevens Halsted, Jr., Samuel O. Pruitt, Jr., and Hugh W. Darling to Plaintiff's First Amended Complaint having been sustained without leave to amend by Order of this Court on March 1, 1967, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED that this action be and the same is hereby dismissed as to Defendants State Bar of California, A. Stevens Halsted, Jr., Samuel O. Pruitt, Jr., and Hugh W. Darling; that Plaintiff take nothing by his action against said Defendants

and that Defendants State Bar of California, A. Stevens Halsted, Jr., Samuel O. Pruitt, Jr., and Hugh W. Darling have and recover of and from Plaintiff their cosrs and disbursements herein which are hereby taxed in the sum of $_____.

DATED: March 7, 1967.

/s/ Robert W. Kenny
Judge of the Superior Court

Tilden W. JOHNSON, Plaintiff and Appellant,

v.

STATE BAR OF CALIFORNIA, a public corporation, Harvard Club of Southern California, Hugh W. Darling, Samuel O. Pruitt, Jr., and A. Stevens Halsted, Jr., Defendants and Respondents.

Civ. 32355.

Court of Appeal, Second District, Division 1.

Dec. 23, 1968.

Action against individual defendants and others for damages for alleged fraud claimed to have prevented plaintiff from passing first year law student examination. The Superior Court of Los Angeles County, Robert W. Kenny, J., entered judgments of dismissal after order sustaining demurrers to amended complaint without leave to amend and the plaintiff appealed. The Court of Appeal, Fourt, J., held that under statute providing that in the first year law student examination the passing grade shall be 70% of the highest possible grade, the highest possible grade is 100% and not, as contended by applicant, the highest grade actually attained by any applicant in any one examination series.

Affirmed.

1. Attorney and Client ⇐6

Under statute providing that in the first year law student examination the passing grade shall be 70% of the highest possible grade, the highest possible grade is 100% and not, as contended by applicant, the highest grade actually attained by any applicant in any one examination series. Rules Regulating Admission to Practice Law, rule 60, § 63, West's Ann.Bus. & Prof. Code following section 6068.

2. Fraud ⇐41

To recover damages for fraud, it is necessary that specific facts be alleged.

3. Fraud ⇐43

Where individual defendants who were former members of board of bar governors were not alleged to have had anything to do with the first year law student examinations which plaintiff applicant took and failed and there was no allegation specifically stating what any particular individual did or did not do and it was not alleged that defendant nonprofit corporation had taken any action against applicant, complaint was insufficient to state a cause of action against individual defendant and nonprofit corporate defendants for damages because of alleged fraud and malice.

4. Appeal and Error ⇐854(3)

If general demurrer should have been sustained on any of the grounds urged, judgment of dismissal should not be reversed as it is the validity of court's action in sustaining demurrer which was under review and not court's opinion or stated reason for its action.

5. Judges ⇐51(3)

Trial judge properly reviewed declaration that he was a party in interest in action claiming fraud based on plaintiff's failure to pass first year law student examination by State Bar, found it insufficient as a matter of law for failure to allege any specific facts and then denied motion to disqualify himself.

Tilden W. Johnson, in pro. per., plaintiff and appellant.

William F. Peters, Los Angeles, for State Bar of California, Hugh W. Darling, Samuel O. Pruitt, Jr., and A. Stevens Halsted, Jr., Los Angeles, defendants and respondents.

Paul, Hastings, Janofsky & Walker, and Oliver F. Green, Jr., Los Angeles, for Harvard Club of Southern California, defendant and respondent.

FOURT, Associate Justice.

This is an appeal from two judgments of dismissal after orders sustaining demurrers to an amended complaint without leave to amend.

EXH "D"

[Civ. No. 32355. Second Dist., Div. One. Dec. 23, 1968.]

TILDEN W. JOHNSON, Plaintiff and Appellant, v. STATE BAR OF CALIFORNIA et al., Defendants and Respondents.

[1] **Attorneys—Right to Practice and Admission to Bar—Eligibility.**—Under the Rules Regulating Admission to Practice Law providing that the passing grade for the first-year law students' examination shall be 70 per cent of the highest possible grade, [Rule VI, § 63], the requirement is that a person to pass must receive a grade of 70 per cent of the highest possible (although perhaps improbable) grade of 100 per cent.

[2] **Appeal—Review—Grounds of Decision—Demurrer.**—If a general demurrer should have been sustained on any of the grounds urged, the judgment should not be reversed; it is the validity of the court's action in sustaining the demurrer which is reviewed and not the court's opinion or stated reason for its action.

[3] **Attorneys—Right to Practice and Admission to Bar—Rights of Applicant.**—In an action against the State Bar and former members of the Board of Governors thereof, and the Harvard Club of Southern California, based on breach of contract, fraud, negligence, and unfair competition and/or unfair uses of foundations, for damages allegedly arising from defendants' declaration that plaintiff had failed to pass the first-year law

[1] See **Cal.Jur.2d, Rev.**, Attorneys at Law, § 32.

[2] See **Cal.Jur.2d**, Appeal and Error, § 537; **Am.Jur.2d**, Appeal and Error, §§ 785, 876.

McK. Dig. References: [1] Attorneys at Law, § 13; [2] Appeal and Error, § 1008; [3] Attorneys at Law, § 7a; [4] Fraud and Deceit, § 57(1); [5] Judges, § 43(0.5).

student examination by virtue of an incorrect grading system, the court properly sustained defendants' general demurrers without leave to amend where the whole theory of plaintiff's entire purported case was based on his erroneous interpretation of the Rules Regulating Admission to Practice Law.

[4] **Fraud — Actions — Pleading — Allegation of Facts.** — In an action against the Harvard Club of Southern California based on fraud, the trial court properly sustained a general demurrer as to such defendant where no facts and circumstances were set forth in the complaint which constituted fraud on the part of the Harvard Club.

[5] **Judges—Disqualification—Grounds—Interest of Judge.**—In an action against the State Bar and former members of the Board of Governors thereof, and the Harvard Club of Southern California, based on breach of contract, fraud, negligence, and unfair competition and/or unfair uses of foundations, for damages allegedly arising from defendants' declaration that plaintiff had failed to pass the first-year law student examination by virtue of an incorrect grading system, the trial judge properly reviewed a declaration filed in support of a motion to disqualify him, found it insufficient as a matter of law, and denied the disqualification motion, where the declaration filed did not assert that the judge was a member of the Harvard Club or a graduate of Harvard but did set forth that the judge attended the University of Southern California and the law school at Stanford University.

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert W. Kenny, Judge. Affirmed.

Action by an applicant for admission to the practice of law for alleged breach of contract, fraud, negligence, and for unfair competition and/or unfair uses of foundation. Judgments of dismissal after general and special demurrers to amended complaint were sustained without leave to amend, affirmed.

Tilden W. Johnson, in pro. per., Plaintiff and Appellant.

William F. Peters, Paul, Hastings, Janofsky & Walker and Oliver F. Green, Jr., for Defendants and Respondents.

FOURT, J.—This is an appeal from two judgments of dismissal after orders sustaining demurrers to an amended complaint without leave to amend.

[4] See **Cal.Jur.2d**, Fraud and Deceit, § 64 et seq; **Am.Jur.2d**, Fraud and deceit, § 424.

In a complaint filed January 13, 1964, plaintiff brought an action against the State Bar of California, a public corporation (Hereafter referred to as State Bar and certain Does I through XXV). Plaintiff asserted that he had applied for admission to practice law in California in 1949 and that he had taken the first year law student examinations in 1949, 1950, 1951 and in 1953 and was not awarded a passing grade in any of said examinations. Further that in 1963 the Committee of Bar Examiners stated that all examinees who wrote "examination papers equaling 70% of the highest possible grade would be passed." That he, the plaintiff, paid an examination fee of $40 and a typing fee of $5 and again took the first year law student examination in June 1963, that the State Bar declared that he had failed to pass that examination, that by virtue of an incorrect grading system his "prestige" has been damaged to the amount of $10,000, and that he was deprived of an opportunity to run for the office of district attorney of Los Angeles County to his damage in the sum of $76,000. For a second cause of action he alleged fraud upon the part of the State Bar in not giving him a passing grade, for a third cause of action he alleged negligence upon the part of the State Bar. Damages of over $100,000 were sought from the State Bar under the original complaint. No summons was issued until sometime in December 1964. The original complaint contains no allegation with reference to any conspiracy or agreement between the State Bar and any other person or organization.

A first amended complaint was filed on January 5, 1967. In the amended complaint plaintiff alleges that he is a graduate of the University of California at Los Angeles in business administration, that he has studied law through an extension or correspondence school and received good grades, that there was a "breach of contract and/or warranty," that there is "unfair competition and/or fraud" and "negligence and/or strict liability." The Harvard Club of Southern California, Hugh Darling, Samuel O. Pruitt, Jr., and A. Stevens Halsted, Jr., were brought into the action as Does I, II, III, and IV. It is set forth that Darling, Halsted and Pruitt are former members of the Board of Bar Governors of the State Bar. The purported first cause of action in the amended complaint is for a breach of contract. Paragraphs III, V and VI of this purported cause are hereinbelow set forth.[1]

[1] "III

"It was discovered in 1966 that the Massachusetts Legislature in Chapter 173 of the Mass. Laws of 1865, and Chapter 132 of the Mass.

The second cause of action is for fraud, the purported third cause of action is for negligence and the purported fourth

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Laws of 1889, and Chapter 204 of the Mass. Laws of 1921 changed the Charter of Harvard University originally granted in Oct. 28, 1636 in such a manner that since 1865, 1889, 1921 the Harvard Board of Overseers (Regents in California) are solely elected by the graduates of Harvard University thus in fact making each graduate of Harvard a Holder in Trust (Sec. 170 Calif. Code of Civil Procedure) of the now in 1966 approximately billion dollars of bonds, and stocks, specifically the $533,000,000 of common stock in hundreds of major U.S. Corporations including 20 major insurance companies. That Harvard apparently heads a syndicate of Universities likewise owning corporation stock, all apparently engaged in practicing law nationally for said corporations and their affiliated foundations, said universities furnishing thru their alumni associations and individual graduates free help for Local, State and National Bar Associations, in effect using said bar associations as local branch offices for the national practice of law and management of said corporations. Said Corporations business and payrolls being used to pay said ostensible free help.

"Therefore the Harvard Club of Southern California has been added as a DOE. Attorneys Hugh W. Darling is thus a member or a recent member of the State Bar Board of Governors, Likewise attorneys A. Steavens Halsted, Jr., and Samuel O. Pruitt.

"Attorney Darling is also listed as an alumnus of the University of Southern California, part of the apprent [*sic*] Harvard syndicate, and Attorney Pruitt, Jr. is an almunus [*sic*] of Harvard and presumably of the Harvard Club. Attorney Halsted, Jr. is listed as an alumnus of Harvard and also as an alumnus of Stanford University apparently part of the aforesaid Harvard syndicate furnishing purported free help to Bar Associations as aforesaid in restraint of competition or unfair competition and/or use of foundations and bar associations to implement their control of a national industrial trust or what so appears. The Harvard Club is located at 816 Fifth St., Los Angeles, Calif., 90017—phone MA 9-1877."

"V

"The State Bar of California is a Public Corporation created by the California Legislature by the State Bar Act of 1939 adding Chapter 4, comprising Sections 6000 thru 6154, Div. III of the Business and Professions Code delegating police supervisory powers to the said State Bar. The State Bar has perpetual succession and a seal, and it may contract, sue and be sued, and so may its committees and members thereof.

"The State Bar is composed of the licensed attorneys of the State of California and governed by a Board of Governors elected by said attorneys. It maintains offices at 601 McAllister St., San Francisco, 2, Calif., and at 1230 W. Third St., Los Angeles, Calif. 90017"

"VI

"One of the public duties of the said State Bar and its Committee of Bar Examiners is to make character investigations of applicants to practice law and to make non-binding recommendations of the educational and experience qualifications of applicant's to practice law in California. The Business and Profession's Code, Section 6060, (h) and (i) specify only that the applicant must pass examinations given by the committee unless the Supreme Court overrules the Committee and admits the applicant to practice without passing the Committee examination. Section 6065 of the said Bus. & Professions Code provides the committee must permit the applicant to inspect the grading of his examination papers whether marked on the examination or otherwise. However so far as the state law reads the Committee may require the examinee in order to pass

cause of action is based upon alleged "unfair competition and/or unfair uses of foundations." Paragraph III of the purported first cause of action which is incorporated by reference into the second, third and fourth purported causes of action contains the only allegations with reference to the defendant Harvard Club. Paragraph II of the purported fourth cause of action is as hereinbelow set forth.[2]

On February 10, 1967, the State Bar, Harvard Club and the three individual defendants filed separate general and special demurrers to the amended complaint. We shall confine ourselves mainly to the general demurrers wherein it is asserted that the amended complaint does not state facts sufficient to constitute a cause of action versus any of the defendants, for we are persuaded that plaintiff did not and cannot state a cause of action against any of the defendants.

The trial judge succinctly stated it in his ruling:

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to turn in an examination paper equal to over 99% of the best possible performance. Thus the Supreme Court in Re 1 C2d 61 [33 P.2d 829], Salot v. State Bar 3 C2d 615 [45 P.2d 203]; Staley v. State Bar 17 C2d 119 [109 P.2d 667], and in Johnson v. State Bar, L.A. 27631 has ruled in effect that unless the State Bar is first sued in breach of contract of its promise in its Rules Regulating Admission to Practice Law, Sec. 63 that it will give a fair examination and fairly grade same and pass all applicants whose examinations equal 70% of the highest possible grade and thus have the Superior Court interpret said sections and award damages or specific performance or establish unfairness and/or fraud, the Supreme Court will not inquire into an applicant's *in*ability to pass an examination that other applicant's [*sic*] passed."

[2] "Plaintiff refers to Sections 17001 thru 17519 and especially and also section 16702, 16720, *16725*, 16757, of the California Business and Professions Code and Unfair Use of Foundations, U.S. 83rd Congress 1954 Foundations Report 2681 and alleges from information and belief that defendants and each of them are engaged in prohibited actions such as a syndicate of universities headed by Harvard University Alumni's Billion Dollar endowment fund management are in effect using bar associations as branch offices to represent university trusts, and private foundations and the corporations whose stock is held in part by said organizations in legal and political actions.

"That in pursuance of this design said university alumni and/or alumnus defendants and each of them herein are competing unfairly with plaintiff relative to the use of legal education and training whereby said university alumni and alumnus advocate and establish bar associations most of whose officers are to work free so that said associations will be dependent on said alumni and/or alumnus furnishing free help, whereby said free help use their positions to exclude competition as set forth herein and then use federal, state, and local civil service payrolls, etc. and corporation business and payrolls to indirectly pay the personnel furnished purportedly free to said Bar Associations damaging plaintiff in the sums set forth herein in Paragraphs XIV thru XVIII of the first cause of action by substituting for "breach of contract" facts set forth in this 4th cause of action. Plaintiff is further damaged in the sum set forth in separate cause Three herein."

"On June 24, 1963, after paying the necessary fees, he again took the first year law student examination. The *gravamen* of plaintiff's complaint against the State bar arises out of his interpretation of Business and Professions Code, Section 6068 subsection 63 which provides that in first year examinations 'the passing grade shall be 70% of the highest possible grade.' The State Bar argues that the 'highest possible grade' would be 100%. The plaintiff earnestly askes this Court to consider that 100% is not a 'possible grade'; instead asks the Court to assume that 80% was the highest possible grade. Since the plaintiff obtained a score of 61.875% at the June 24, 1963, examination, 'plaintiff had actually performed 61.875/80 or 77.3% of the highest possible grade.' By this reasoning, plaintiff reaches the conclusion that he had attained a grade over 70% and therefore should have been passed.

". . .

"Plaintiff has asked to leave to amend. However, since the questions involved in the complaint are solely matters of law, the benefits to be gained by the plaintiff by further amendment are purely illusory. If plaintiff desires to have his novel interpretation of the 70% rule of B. & P. Sec. 6068(63) ultimately resolved by the highest courts in this State, his record on appeal will best be made a definite and final ruling of this Court at this time. The demurrers of the defendants will therefore be sustained without leave to amend and the motions to strike ordered off calendar. Counsel for defendants are to prepare judgments in accordance with this opinion."

The judgment of dismissal was entered on March 6, 1967, with reference to Harvard Club of Southern California and the judgment of dismissal with reference to State Bar of California, A. Stevens Halsted, Jr., Samuel O. Pruitt, Jr., and Hugh W. Darling was entered on March 7, 1967.

[1] Rules Regulating Admission to Practice Law are set forth in the Business and Professions Code following section 6068. Rule 63 thereof states: "The first-year examination shall be conducted either by the committee or under its supervision or pursuant to its direction each year simultaneously in Los Angeles and in San Francisco, beginning on the last Monday in June. The examination shall be written, and shall consist of such questions as the committee may select on the subjects of contracts, torts, and criminal law. The passing grade shall be seventy per cent (70%) *of the highest possible grade.*" (Italics added.)

Plaintiff argues in effect that the words of the rules do not

mean what they state. He insists that the "highest possible grade" is the highest grade actually attained by any applicant in any one examination series. The requirement is clearly that a person to pass must receive a grade of seventy percent of the highest *possible* grade. It may be improbable but it is *possible* to secure a grade of one hundred percent. In short, plaintiff contends that the standards should be lowered. We are convinced that no such meaning was intended and that the words cannot be so interpreted. It is readily apparent that plaintiff's entire purported case is based upon his erroneous interpretation of the clear meaning of the rules.

Plaintiff does not allege any facts to show wherein or how there was any malice, fraud or corruption unless it be in the use of the "seventy percent of the highest possible grade" rule. Specific facts must be alleged and this the plaintiff has neglected to do. See *Norkin* v. *United States Fire Ins. Co.*, 237 Cal.App.2d 435, 437 [47 Cal.Rptr. 15], where it is said: "Initially it is to be noted that 'It is a cardinal rule of pleading that fraud must be pleaded in specific language descriptive of the acts which are relied upon to constitute fraud. It is not sufficient to allege it in general terms, or in terms which amount to mere conclusions.' [Citation.] 'the elements of fraud, which give rise to the tort action for deceit, are (1) misrepresentation (false representation, concealment or nondisclosure); (2) knowledge of falsity (or "scienter"); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage.' [Citation.] It is not necessary to consider whether plaintiff has sufficiently pleaded the latter four elements of fraud, for it is clear that he has not sufficiently alleged the first element, namely, a false representation."

The three individuals, all former members of the Board of Bar Governors, are not alleged to have had anything to do with the examinations which plaintiff took and failed. There is no charging allegation specifically stating what any particular person did or did not do.

Nowhere is it alleged that the Harvard Club, a California nonprofit corporation has taken any action against plaintiff.

It is true that the trial judge mentions in his ruling that he sustained the demurrer of the Harvard Club for the reason that the statute of limitations had run. **[2]** The rule, however, is that if the general demurrer should have been sustained upon any of the grounds urged, the judgment should not be reversed. It is the validity of the court's action in sus-

taining the demurrer which is here under review and not the court's opinion or stated reason for its action. (See *Irwin* v. *City of Manhattan Beach*, 65 Cal.2d 13, 20 [51 Cal.Rptr. 881, 415 P.2d 769]; *Ostrowski* v. *Miller*, 226 Cal.App.2d 79, 85-86 [37 Cal.Rptr. 790]; *Straughter* v. *Safety Sav. & Loan Assn.*, 244 Cal.App.2d 159, 162 [52 Cal.Rptr. 871]; *Weinstock* v. *Eissler*, 224 Cal.App.2d 212, 224 [36 Cal.Rptr. 537]; *Heger* v. *Flaig** (Cal. App.) 67 Cal.Rptr. 92.)

[3] The heart of plaintiff's whole theory in this case is that the 70 percent rule was wrongly interpreted by the State Bar and therefore he has been damaged. So long as he adheres to his interpretation of the rule he cannot possibly state a cause of action for his whole claim is based on a false premise. Nor should we inquire, even if we were entitled to do so, into appellant's inability to pass the examination which was successfully passed by others. In short appellant seeks the "legally impossible." The court under the circumstances properly sustained the demurrers without leave to amend. (See *Addiego* v. *Hill*, 238 Cal.App.2d 842, 845-846 [48 Cal.Rptr. 240]; *Kiang* v. *Strycula*, 231 Cal.App.2d 809, 810 [42 Cal.Rptr. 338]; *Robinson* v. *Robinson*, 198 Cal.App.2d 193, 197 [17 Cal.Rptr. 786]; *Evarts* v. *Jones*, 170 Cal.App.2d 197, 205-206 [338 P.2d 627].)

[4] No facts and circumstances are set forth which constitute fraud upon the part of the Harvard Club. The general demurrer as to the Harvard Club in any event was properly sustained. See *Lesperance* v. *North American Aviation, Inc.*, 217 Cal.App.2d 336, 344-345 [31 Cal.Rptr. 873], where it is stated: "Apropos the sufficiency of a pleading in fraud actions are the observations of Mr. Witkin in 2 Witkin, California Procedure, page 1327: 'Fraud actions have been classed as "disfavored," and are subject to strict requirements of particularity in pleading. The idea seems to be that allegations of fraud involve a serious attack on character, and fairness to the defendant demands that he should receive the fullest possible details of the charge in order to prepare his defense. Accordingly the rule is everywhere followed that fraud must be specifically pleaded. The effect of this rule is twofold: (1) General pleading of the legal conclusion of "fraud" is insufficient; the facts constituting the fraud must be alleged. (2) Every element of the cause of action for fraud must be alleged in the proper manner (i.e., factually and specifically), and the policy of liberal construction of the pleadings (see

*A hearing was granted by the Supreme Court on May 9, 1969.

supra, § 209) will not ordinarily be invoked to sustain a pleading defective in any material respect.' The elements of a cause of action for damages for fraud and deceit are: (1) Representation; (2) falsity; (3) knowledge of falsity; (4) intent to deceive; (5) reliance and resulting damage (causation). [Citation.] In order to state a cause of action it is necessary for a plaintiff to allege facts which show the existence of each of these elements. Plaintiff has failed to meet this essential requirement.'' (See also *Allen* v. *Ramsay*, 179 Cal. App.2d 834, 848 [4 Cal.Rptr. 575].)

[5] Finally plaintiff complains that Judge Robert W. Kenny was in effect a party in interest. The declaration filed does not assert that the judge was a member of the Harvard Club or a graduate of Harvard but appellant does set forth that the judge attended the University of Southern California and the law school at Stanford University. The court properly reviewed the declaration and found it insufficient as a matter of law and thereupon denied the motion to disqualify himself. (See *Evans* v. *Superior Court*, 107 Cal.App. 372, 376 [290 P. 662].)

It is fairly clear to this court that appellant herein for many years last past has engaged in vexatious litigation with reference as to whether he has passed the examinations given by the State Bar. See Supreme Court case numbered 22,135 filed in 1951 and case numbered 27,631 filed in 1963 and the repeated petitions to the State Bar. Appellant failed to pass the required beginners' examination in 1963 and on at least several other occasions. No amount of torture to the plain language of the pertinent law can change the situation. Appellant cannot state a cause of action against the named respondents, or any of them, for damages, relief or otherwise in this matter for his predicament is brought about solely from his own deficiencies and not from any action or otherwise of the respondents.

The judgments are and each of them is affirmed.

Wood, P. J., and Lillie, P. J., concurred.

APPENDIX F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

TILDEN W. JOHNSON, Plaintiff and Appellant, vs. STATE BAR OF CALIFORNIA, etc., et al., Defendants and Respondents.	2d Civil 32355 Minutes

THE COURT:

Petition for rehearing denied.

Date: January 20, 1969

CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of this Court this ___ day of JUN 10 1969 AD, 19__

CLAY ROBBINS, JR., Clerk

By H. H. Reeves Deputy Clerk

APPENDIX G

ORDER DENYING HEARING
After Judgment by the Court of Appeal
2nd District, Division 1, Civil No. 32355

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA
IN BANK

FILED Feb 19 1969
William I Sullivan, Clerk

JOHNSON
v.
STATE BAR OF CALIFORNIA ET AL.

Appellant's petition for hearing DENIED.

I, William L. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of this Court, this 16th day of June . . . AD 1969.

WILLIAM L. SULLIVAN
by A. Johnson,
Deputy Clerk.

APPENDIX H

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT,
DIVISION ONE

TILDEN W. JOHNSON,	)	
	)	
Plaintiff and Appellant,	)	
vs.	)	2d Civil 32355
	)	
STATE BAR OF CALIFORNIA, etc., et al.,	)	Minutes
	)	
Defendants and Respondents.	)	
	)	

THE COURT:

Motion to recall remittitur denied.

Dated: March 12, 1969

CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the preceding is a true and correct copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of this Court, this __ day of June 16, 1969 A.D. 19 __.

CLAY ROBBINS JR., Clerk
by H. H. Reeves, Deputy Clerk

APPENDIX I

Order Due
May 9, 1969

ORDER DENYING HEARING
After Judgment by the Court of Appeal
2nd District, Division 1, Civil No. 32355

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA
IN BANK

FILED May 8 1969
William I. Sullivan, Clerk

JOHNSON
v.
STATE BAR OF CALIFORNIA ET AL.

Appellant's petition for hearing DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of this Court, this 13th day of May , A.D. 1969

WILLIAM I. SULLIVAN
by Bishel Deputy Clerk

APPENDIX A

SUPREME COURT OF THE UNITED STATES
No. ——, October Term, 1968

FILDEN W. JOHNSON,

Appellant

v.

STATE BAR OF CALIFORNIA, ET AL.

ORDER

UPON CONSIDERATION of the application of appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled case be, and the same is hereby, extended to and including August 6th, 1969, without prejudice to the Court's consideration of whether this application has been filed in time.

/s/ THURGOOD MARSHALL
Associate Justice of the Supreme Court of the United States

Dated this 26th day of June, 1969.